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Brief for Respondents on Formulation of Decree

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 4

SPOTTSWOOD THOMAS BOLLING, ET AL.,
Petitioners,

v.

C. MELVIN SHARPE, ET AL., *Respondents.*

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INDEX

Subject Index

PAGE

Argument 1

Appendix Index

Exhibit 1 7

Report, dated May 25, 1954, containing a declaration of policy concerning the question of integration in the public schools.

Exhibit 2 9

Report of the Superintendent of Schools to the Board of Education, dated May 25, 1954, outlining plans for the desegregation of all schools.

Exhibit 3 25

Report of the Superintendent of Schools to the Board of Education, dated June 23, 1954, setting forth a schedule of dates for completion of the program of desegregation of the public schools of the District of Columbia.

Exhibit 4 33

Action of Board of Education, completed September 10, 1954, suspending paragraph 4 of its declaration of policy.

Exhibit 5 35

Affidavit of the Superintendent of Schools, dated November 12, 1954, setting forth progress of the program of integration of the public schools.

Exhibit 6 37

Affidavit of the President of the Board of Education, dated November 12, 1954, concerning Board action and views on integration.

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ARGUMENT

In the decision of this case on May 17, 1954 the Court concluded its opinion as follows:

> "For the reasons set out in Brown v. Board of Education, this case will be restored to the docket for reargument on questions 4 and 5 previously propounded by the Court. 345 U. S. 972."

In *Brown* v. *Board of Education*, the Court, on the same day, decided several State cases argued and reargued jointly

with this case. Therein the Court also ordered restoration of those cases to the docket for the same purpose. In the *Brown* case the Court observed: "On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question * * *. Because there are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity".

While, admittedly, the decision of this case presented to the respondents problems of considerable complexity, they have promulgated and put into effect in the public school system of the District of Columbia measures to accomplish education of pupils without regard to race in accordance with the decision of the Court.

Set forth in the appendix to this brief are the following:

Exhibit 1—Report, dated May 25, 1954, containing a declaration of policy concerning the question of integration in the public schools (approved by the Board of Education, May 25, 1954).

Exhibit 2—Report of the Superintendent of Schools to the Board of Education, dated May 25, 1954, outlining plans for the desegregation of all schools (approved by the Board of Education, June 2, 1954).

Exhibit 3—Report of the Superintendent of Schools to the Board of Education, dated June 23, 1954, setting forth a schedule of dates for completion of the program of desegregation of the public schools of the District of Columbia (approved by the Board of Education, June 23, 1954).

Exhibit 4—Action of Board suspending paragraph 4 of its declaration policy.

Exhibit 5—Affidavit of the Superintendent of Schools setting forth progress of the program of integration of the public schools.

Exhibit 6—Affidavit of the President of the Board of Education concerning Board action and views on integration.

It will be seen from the foregoing exhibits that positive steps have been taken and are well under way for complete desegregation of pupils in the public schools of the District of Columbia, and that, according to the schedule approved by the respondents, the entire program will have been completed by September 1, 1955, i.e., before the beginning of the next full school year.

While Exhibit 6 shows that there was wide divergence of opinion among the respondent members of the Board of Education concerning the method and the timing of the program of desegregation and that some of the Board members are still not satisfied therewith, it further shows that the Statement of Principles, the General Plan and the Time Schedule were all approved by a majority of the Board. Except for a brief and mild expression of emotions in four or five schools above the elementary level, the transition has proceeded without incident.

Believing that their legal position on the principal question had been fully set forth in the original brief filed herein, counsel for respondents confined themselves in their Brief On Reargument to answers to questions 4 and 5 propounded by the Court in its order of June 8, 1953. Therein counsel set forth their position that a declaration of unconstitutionality of public schools does not require immediate transition to an integrated school system and recommended that this and other cases pending before the Court be re-

manded to the courts of original jurisdiction with instructions for such courts to order the commencement of integration at the earliest praticable date, with complete integration to be accomplished by a definite future date to be fixed by this Court, and with progress toward completion of the program to be periodically investigated by the lower courts.

Counsel for respondents adhere to the legal position set forth in their Brief on Reargument.

Unless, therefore, the Court disagrees with the first premise, i.e., that the unconstitutionality of segregated schools does not require an immediate transition to an integrated system, it is submitted that no directive of compliance with the decision of May 17th is necessary, because the time schedule which respondents have put into operation for the accomplishment of complete integration of the schools in the District of Columbia is as short as can reasonably be devised to establish, in orderly fashion, a school system which complies with the decision.

If the Court agrees with the last premise, then, it is submitted, the entire matter, so far as the District of Columbia school system is concerned, is, for all practical purposes, moot—at least upon the completion of the time schedule in the very near future the matter will be completely moot, and counsel for respondents submit to the Court that there will be no necessity for even the remand of this case to the United States District Court for the District of Columbia.

CONCLUSION

The basic legal position of counsel for respondents was fully set forth in their brief on reargument and nothing need be added thereto. Herein there is fully set forth a report of progress towards complete compliance with the decision of this Court which demonstrates that within less than ten (10) months from the date of final argument the controversy so far as the District of Columbia is concerned will be com-

pletely moot. Under the circumstances, it is submitted that no directive from the Court is necessary for compliance with its ruling.

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